

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Cory Miller	Team: Team # 6	CCRB Case #: 200310135	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 12/20/2003 1:00 PM	Location of Incident: 233rd Street & Whiteplains Road	Precinct: 47	18 Mo. SOL 6/20/2005	EO SOL 6/20/2005	
Date/Time CV Reported Sat, 12/20/2003 3:42 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 12/20/2003 3:42 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Acosta	11677	924863	PBBX

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Elizabeth Lorenzo	25323	923126	047 PCT
2. POM Leo Maldonado	11193	924115	PBBX
3. POM James Shannon	31444	894357	PBBX

Officer(s)	Allegation	Investigator Recommendation
A.POM Daniel Acosta	Force: Officer Daniel Acosta used physical force against § 87(2)(b)	
B.POM Daniel Acosta	Discourtesy: Officer Daniel Acosta spoke rudely to § 87(2)(b)	

Synopsis

On December 20, 2003, § 87(2)(b) alleges that she was the victim of police misconduct. § 87(2)(b) alleges that as she was double-parked waiting for a parking spot, PO Daniel Acosta approached her vehicle. After a brief conversation, § 87(2)(b) alleges that PO Acosta pulled her out of her car, causing her head to hit the pavement. § 87(2)(b) also alleges that when she was leaving the 47th Precinct Station House, PO Acosta stated “she ruined my fucking day.”

This case was received on December 20, 2003 and assigned to Investigator Cory Miller. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Summary of Complaint

§ 87(2)(b) made her complaint by calling the CCRB. Her initial call mirrors her statement to the CCRB.

§ 87(2)(b) (See ENC 4A-E)

§ 87(2)(b) was interviewed at the CCRB on January 20, 2004. On December 20, 2003, at approximately 1:00 PM, § 87(2)(b) was driving to the post office on 232nd Street and Whiteplains Road in the Bronx. § 87(2)(b) was driving her 1999 silver Honda Accord, license plate # § 87(2)(b) which is registered to her mother, § 87(2)(b). § 87(2)(b) saw that a man was pulling out of a parking space in front of § 87(2)(b). She then took her seat belt off in order to prop herself up so that she could reverse to allow the man to back out of the parking space. At this time, § 87(2)(b) received a phone call on her cell phone from her friend § 87(2)(b). As she began to talk to § 87(2)(b), an officer later identified as PO Daniel Acosta, approached § 87(2)(b)'s car and asked her for identification. § 87(2)(b)'s window was halfway down. PO Acosta asked § 87(2)(b) for her license. § 87(2)(b) was confused because she did not understand what she had done. She asked PO Acosta, “why do you need my license?” PO Acosta asked § 87(2)(b) again for her license. At this point § 87(2)(b) still was connected to § 87(2)(b) on her cell phone.

After PO Acosta asked § 87(2)(b) a second time, he opened § 87(2)(b)'s door and approached her. § 87(2)(b) said into her phone, “he’s in my car!” PO Acosta then grabbed § 87(2)(b) by the collar of her jacket and dragged her out of her car, scraping her forehead on the pavement in the process. When PO Acosta got § 87(2)(b) up he grabbed her arms and pulled them behind her back and then placed handcuffs on her wrist. § 87(2)(b) stated that there was a crowd of approximately ten or twelve people who had gathered across the street and had witnessed what had occurred.

The handcuffs were too tight on § 87(2)(b)'s wrists, so she said, “you’re hurting my hand.” PO Acosta said, “you’re resisting arrest, you’re resisting arrest with a loud tone.” As he walked § 87(2)(b) over to the prisoner van that was parked on White Plains Road at 232nd Street, PO Acosta said, “you can sue me, I already have a lawsuit going against me.” § 87(2)(b) said, “I didn’t do anything, my hand is hurting, what are you doing? You’re not telling me what I did wrong.” PO Acosta yelled across the street to an older officer, later identified as PO James Shannon, “come get this girl.” § 87(2)(b) then yelled back at PO Acosta, “you’re leaving my mom’s stuff,” because PO Acosta had left § 87(2)(b)'s door open. An older white, short PO, later identified as PO Leo Maldonado, came and escorted § 87(2)(b) to the prisoner van. Inside the van was another officer, PO James Shannon. § 87(2)(b) sat in the prisoner van with PO Shannon and began to cry. She asked PO Shannon what she had done. PO Shannon tried to find tissues, but could not. PO Maldonado then came back to the van and sat next to § 87(2)(b). He asked her what had happened. § 87(2)(b) was crying hysterically, and PO Maldonado attempted to calm her, saying, “calm down, calm down, just tell me what happened.” PO Maldonado said, “the only thing PO Acosta can do is give you a summons.” § 87(2)(b) said, “why am I getting a summons? I didn’t do anything wrong. Let me explain to you what happened.” § 87(2)(b) explained what had occurred to PO Maldonado. PO Maldonado said, “in that case, he can only give you a summons and let you go.”

§ 87(2)(b) then became concerned for her money and cell phone that was in her car, because her car was still open. She explained this to PO Maldonado, and he said that someone would get her stuff. Eventually § 87(2)(b)'s friend § 87(2)(b) who lives in the vicinity, took § 87(2)(b)'s things. PO Acosta then approached the van and said, "your stuff will be in a safe spot. It's gonna be locked up, and I'm gonna get the keys to your car. Where's your license?" § 87(2)(b) said, "my license is in my car in my purse." PO Acosta and § 87(2)(b)'s friend § 87(2)(b) then walked away toward § 87(2)(b)'s car.

When PO Acosta returned to the van, he asked PO Shannon if he would run § 87(2)(b)'s license information in the van's computer. PO Shannon ran her license information, and said, "it's clean." PO Acosta then said, "run the car, run the license plate. The car's probably stolen." PO Shannon ran the information and again said, "it's valid, what do you want me to do?" PO Acosta then told § 87(2)(b) that she was going to be taken to the 47th Precinct. § 87(2)(b) asked the officers why she was going to the precinct, and what she had done. PO Acosta then got out of the van with PO Maldonado and walked off again. When the officers returned they placed another man in the prisoner van. This man had been arrested by the officers. PO Acosta then gave § 87(2)(b)'s car keys to a friend of hers, and they drove to the 47th Precinct. On the way to the precinct § 87(2)(b) continued to cry and ask what she had done. PO Maldonado attempted to calm her. Eventually, PO Acosta said, "by the way, you were resisting arrest."

When they all arrived at the precinct, PO Acosta's commanding officer asked him what happened. He listened to PO Acosta, and then approached § 87(2)(b) and asked her what had happened. § 87(2)(b) told him. The commanding officer said that PO Acosta told him that he had hurt his leg while trying to place § 87(2)(b) under arrest. § 87(2)(b) was surprised to hear this, because she insisted that she had not resisted in any manner while being placed in handcuffs. She insists that she did not notice any injuries on PO Acosta. § 87(2)(b) cited the great difference in height and weight between herself and PO Acosta.

§ 87(2)(b) sat in the front waiting area of the precinct as several officers congregated. PO Acosta approached these officers and pointed to § 87(2)(b) and said, "I really want to arrest her, but I can't, cause they're saying I can't." (By they, PO Acosta was referring to PO Maldonado and PO Shannon). PO Maldonado and PO Shannon told PO Acosta, "just write her a summons and let her go." PO Acosta said, "but I really want to arrest her, and I didn't get to search her, so I need somebody to search her." PO Acosta then went to look for a female officer. He came back momentarily, and asked the female officer, later identified as PO Elizabeth Lorenzo, "can you search her?" PO Lorenzo asked, "why am I searching her?" PO Acosta answered, "she's probably got needles, search her, cause I didn't search her." PO Lorenzo asked, "is she gonna be processed?" PO Acosta said, "no, I can't. She's only gonna get a summons." In response, PO Lorenzo said, "why am I searching her if she's only gonna get a summons?" PO Acosta then said, "do you want me to buy you dinner?" PO Lorenzo then began to search § 87(2)(b). She asked § 87(2)(b) if she had any needles. § 87(2)(b) said, "I don't even drink." PO Lorenzo then said, "she's good, she's clean." The officer who sat at the desk then said, "write her the summons and let her go." By this time § 87(2)(b)'s brother had arrived to drive her home. PO Acosta then said, "it's gonna take a while, plus I still want to arrest her. I really want to arrest her." § 87(2)(b) began to cry again and again asked, "what did I do? Was I really wrong to have asked you why you wanted my license? Was I really wrong? Was I not supposed to ask?" PO Maldonado said, "you have a right, but sometimes some officers don't tell you. They just approach you and ask for the stuff and you give it to them." PO Acosta then took § 87(2)(b) into a holding cell and left her there for half an hour. Eventually PO Acosta took her out of the cell and brought her to the desk area in the front of the precinct. He wrote the summonses, and then turned to her and said, "I still really want to arrest you." § 87(2)(b) then began to cry again. The officer sitting at the desk again said, "let her go." PO Acosta then took the handcuffs off of § 87(2)(b) saying as he was doing so, "you know I just wanted to arrest you so badly." PO Acosta then gave her the two summonses for obstructing traffic and resisting arrest. As § 87(2)(b) was walking out of the precinct she heard PO Acosta say, "she fucked up my day." § 87(2)(b) states that she had abrasions on her forehead, and deep bruises on her wrists from the handcuffs. She did not receive medical treatment for these injuries.

Results of Investigation

PO Daniel Acosta: (See ENC 6A-B)

Officer Daniel Acosta was interviewed on February 11, 2004. On December 20, 2003, PO Acosta worked from 10:00 AM to 6:00 PM. PO Acosta was assigned to van # 5820, patrolling the 47th Precinct. PO Acosta was working with PO Maldonado. PO Acosta did not know PO Maldonado's first name. PO Acosta was dressed in uniform. Reading from his memo book, PO Acosta stated, "1:00 PM- One under, opposite 4160 White Plains Road. § 87(2)(b) DOB § 87(2)(b) At t/p/o defendant was blocking vehicle traffic when arresting officer Acosta asked defendant for license. Defendant refused. After repeated attempts by PO Acosta to obtain license, defendant was placed in handcuffs after she attempted to start the car. Defendant was given summons at 47th Precinct, summons # § 87(2)(b) and § 87(2)(b) The two summonses were for § 87(2)(b)

At approximately 1:00 PM PO Acosta observed that § 87(2)(b) was double-parked on White Plains Road. PO Acosta stated that § 87(2)(b) was clearly double-parked, as she was talking on her cell phone and parked between one car and the elevated train tracks. § 87(2)(b) did not seem to be looking for a parking spot. PO Acosta knocked on § 87(2)(b)'s driver's side window. § 87(2)(b) lowered the window. PO Acosta introduced himself and asked § 87(2)(b) for her driver's license. § 87(2)(b) asked, "for what?" PO Acosta stated that § 87(2)(b) was not being compliant and was being discourteous. PO Acosta replied, "once I know who you are I'll tell you why I stopped you." § 87(2)(b) was on her cell phone. She told PO Acosta that she knows her rights, and that she either studied law, knows law, or knows a lawyer, and that PO Acosta has no right to ask her for ID. PO Acosta believed that § 87(2)(b) was on the phone with her brother. PO Acosta attempted to explain to § 87(2)(b) that because she was stopped by an officer, she has to provide her driver's license. § 87(2)(b) replied, "these new cops, these rookies, you guys don't know this or that. Stop harassing me babyface." § 87(2)(b) continued to talk on her cell phone. PO Acosta told § 87(2)(b) that if she could not provide her driver's license she would be taken to the precinct in order to determine who she was. § 87(2)(b) refused again, so PO Acosta asked her to open the door. § 87(2)(b) refused to open her driver's side door, at which point PO Acosta opened her driver's side door and asked her to step out of the vehicle. § 87(2)(b) refused to step out of the vehicle. She told the individual with whom she was speaking on her cell phone to "hurry up and come out." PO Acosta asked several more times. He states that he "even said please." § 87(2)(b) continued to refuse. PO Acosta asked her again to step out of the vehicle, at which point § 87(2)(b) attempted to start her car. PO Acosta stated that this conversation lasted approximately ten minutes. At this time PO Maldonado was up the street issuing an individual a summons. § 87(2)(b) then squatted down in order to stay in the car. § 87(2)(b) then "fell out of her vehicle." Later in the interview, however, PO Acosta stated that "the conversation lasted ten minutes before I pulled her out of the car." PO Acosta stated that he had grabbed § 87(2)(b) by her left arm, and with her right arm § 87(2)(b) attempted to start the vehicle. She then saw PO Acosta's handcuffs, at which point she stated, "what're you gonna do with that?" Because of the fact that § 87(2)(b) was attempting to stay in the vehicle by squatting down, her momentum carried her out of the car. PO Acosta stated that § 87(2)(b)'s head did not hit the pavement. He stated that her backside hit the pavement. PO Acosta then asked § 87(2)(b) if she was hurt or if she needed to go to the hospital. She said "no." § 87(2)(b)'s cell phone had fallen to the ground. As she was being handcuffed she yelled at the cell phone, "hurry up." PO Acosta then handcuffed § 87(2)(b) and walked her to van # 5820, which was one block away.

PO Acosta then walked back to § 87(2)(b)'s vehicle in order to secure it. An individual who PO Acosta believes was § 87(2)(b)'s brother signed for her car and her personal belongings. This took approximately five minutes. PO Acosta walked back to the van and began to drive to the 47th Precinct. He stated that there was no one in the van beside himself, PO Maldonado and § 87(2)(b). PO Acosta stated that there was no conversation in the van on the way to the precinct. PO Acosta stated that § 87(2)(b) was crying while in the van because her mother was in the hospital. PO Acosta denied stating, "run her information and license plate number. The car's probably stolen."

When they arrived at the 47th Precinct § 87(2)(b) was taken to the desk and a pedigree information sheet was filled out. PO Acosta found a female officer whom he could not identify. This female officer was asked to search § 87(2)(b). After the female officer searched § 87(2)(b) PO Acosta offered to buy the female officer a soda. He denies offering to buy the female officer dinner if she searched § 87(2)(b).

PO Acosta could not recall if he said, "you can sue me, I already have a lawsuit going against me." PO Acosta could not recall stating, "I really wanna arrest her but I can't, cause they're saying I can't." PO Acosta discussed with a superior officer whether § 87(2)(b) should be issued a summons or should be

arrested. PO Acosta denies accusing § 87(2)(b) of having needles. PO Acosta denies saying, “she really fucked up my day,” as § 87(2)(b) left.

PO Leo Maldonado: (See ENC 8A-B)

PO Leo Maldonado was interviewed at the CCRB on March 10, 2004. On December 20, 2003, PO Maldonado worked from 10:00 AM to 6:00 PM with PO Daniel Acosta and PO James Shannon. PO Maldonado worked in uniform assigned to the Razor unit in van # 5820 within the confines of the 47th Precinct. PO Maldonado did not have any entries in his memo book regarding this incident.

At approximately 1:00 PM PO Maldonado, PO Acosta and PO Shannon were issuing summonses in the vicinity of 233rd Street and White Plains Road. PO Maldonado was issuing a summons on the west side of White Plains Road. PO Maldonado stated that PO Acosta was issuing a summons on the west side of White Plains Road, and contradicting what he had earlier said, he stated that he was issuing a summons on the east side of White Plains Road. PO Shannon was issuing a summons on the same side of the street as PO Maldonado. PO Maldonado was issuing a summons for § 87(2)(b). When asked if he could see PO Acosta issuing a summons considering all three officers were issuing summonses at the same time within the confines of one block, PO Maldonado stated that his attention was entirely on issuing his own summons. When PO Maldonado returned to his vehicle he saw § 87(2)(b) handcuffed. PO Maldonado stated that the only individuals in the van when he arrived were PO Acosta and § 87(2)(b). He believed that PO Shannon arrived at the van approximately the same time as himself. PO Maldonado did not witness § 87(2)(b) being handcuffed. PO Maldonado believed that § 87(2)(b) was being issued a summons for § 87(2)(b). PO Maldonado stated that PO Acosta did not tell him anything about what had occurred with § 87(2)(b) including why she was being issued a summons. PO Maldonado stated that he heard no conversation at all between PO Acosta and § 87(2)(b). He stated that § 87(2)(b) appeared to be upset. PO Maldonado did not know why § 87(2)(b) was upset. PO Shannon was driving the van, PO Acosta was in the front passenger seat, and PO Maldonado sat in the back of the van with § 87(2)(b). PO Maldonado stated that he did not believe that an officer ran § 87(2)(b)'s information before driving to the precinct, and that he did not run § 87(2)(b)'s information. PO Maldonado was not asked by PO Acosta to run § 87(2)(b)'s information.

PO Shannon then drove over to the 47th Precinct. PO Maldonado did not know why § 87(2)(b) was being brought back to the precinct at opposed to being issued a summons at the scene. PO Maldonado did not remember if PO Acosta asked him if § 87(2)(b) should be arrested or issued summonses. PO Maldonado and PO Shannon went into the roll call room immediately. PO Acosta proceeded to deal with § 87(2)(b). PO Maldonado did not see § 87(2)(b) searched. He did not see an argument between PO Acosta and another officer regarding the searching of § 87(2)(b). At no point did PO Maldonado hear PO Acosta state, “run the car, run the license, the car’s probably stolen.” PO Maldonado does not recall if PO Acosta was injured. PO Acosta did not complain of injury in PO Maldonado’s presence. PO Maldonado did not hear PO Acosta state, “I really wanna arrest her, but I can’t, cause they’re saying I can’t.” PO Maldonado did not hear PO Acosta accuse § 87(2)(b) of having needles. PO Maldonado did not hear PO Acosta state, “she really fucked up my day,” as § 87(2)(b) was leaving.

PO James Shannon: (See ENC 10A-B)

PO James Shannon was interviewed at the CCRB on March 19, 2004. On December 20, 2003, PO Shannon worked from 9:30 AM to 6:05 PM. PO Shannon worked with PO Acosta and PO Maldonado. PO Shannon worked in uniform, assigned to marked van # 5820. PO Shannon did not have any entries in his memo book regarding this incident. PO Shannon did not issue any summonses on December 20, 2003.

PO Shannon did not recall anything about the incident. After being told that the incident involved a woman named § 87(2)(b) whose vehicle was stopped by PO Acosta and then given two summonses, PO Shannon stated that he did not recall anything. PO Shannon stated that all he remembered was beginning and ending patrol. PO Shannon stated that he was assigned to the confines of the 47th Precinct, but could not recall if he went into the precinct that day.

When told that § 87(2)(b) was crying in the van, PO Shannon then stated that he recalled that PO Acosta had made an arrest and that “a young lady was upset.” PO Shannon could not physically describe § 87(2)(b). PO Shannon stated that he was the operator of the vehicle on December 20, 2003. PO Shannon did not recall if there was any conversation on the way to the 47th Precinct. PO Shannon did

not recall if § 87(2)(b) was searched at the 47th Precinct. PO Shannon did not recall if any license plate or driver's licenses were run that day. PO Shannon could not recall if PO Acosta requested that he run § 87(2)(b)'s information. PO Shannon could not recall if he told § 87(2)(b) that the only thing that PO Acosta could do was issue her summonses. PO Shannon did not know that PO Acosta was injured that day.

PO Elizabeth Lorenzo: (See ENC 12A-B)

PO Elizabeth Lorenzo was interviewed at the CCRB on April 6, 2004. On December 20, 2003, PO Lorenzo worked from 7:05 AM to 3:40 PM. PO Lorenzo worked with PO Larin assigned to sector B in the confines of the 47th Precinct. PO Lorenzo worked in uniform, assigned to marked vehicle #2391. Reading from her memo book at the approximate time of the incident, PO Lorenzo stated, "12:24 PM- Meal in the 47th Precinct Station House. 1:24 PM- Resume patrol. 1:45 PM- Assault in progress at 747 E. Gun Hill Road."

After explaining the circumstances of the complaint, PO Lorenzo stated that she could not recall searching a female in the 47th Precinct at approximately 1:30 PM, but stated that it is a possibility. PO Lorenzo did not recognize a photograph of § 87(2)(b). PO Lorenzo did not recognize PO Acosta's name, but did state that she thinks she knows PO Leo Maldonado. PO Lorenzo stated that she rarely deals with officers from the patrol borough. When asked if PO Acosta offered her dinner if she would search § 87(2)(b), PO Lorenzo stated that situation might have occurred on December 20, 2003, but could not positively recall if that happened. PO Lorenzo stated that such offers occur frequently.

New York State Trooper's Driver's License Check: (See ENC 14A-D)

The New York State Troopers confirm that § 87(2)(b)'s license plate was run at 12:53 PM by PO James Shannon. § 87(2)(b)'s driver's license was also run at 12:52 PM, although the report does not indicate who ran this information. § 87(2)(b)'s license plate was run a second time at 1:47 PM by an unidentified officer.

Summonses Issued to § 87(2)(b) (See ENC 17A)

PO Acosta issued § 87(2)(b) two summonses at 1:36 PM for § 87(2)(b)

Disposition of Summonses:

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Criminal Conviction History, § 87(2)(b)

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Officer CCRB History: (See ENC 1A)

PO Acosta has never had a substantiated allegation.

Conclusions and Recommendations

Officer Identification:

Officer Acosta was identified by the summonses that he issued to § 87(2)(b). Additionally, PO Acosta acknowledged interacting with § 87(2)(b) on December 20, 2003.

Undisputed Facts:

§ 87(2)(b) was double parked on White Plains Road at approximately 12:45 PM when PO Daniel Acosta approached her vehicle. § 87(2)(b) initially refused to provide PO Acosta with her driver's license. § 87(2)(b) was subsequently placed in handcuffs, taken to the prisoner van, and then driven to the 47th Precinct. § 87(2)(b) was issued two summonses for § 87(2)(b)

Credibility Assessment:

§ 87(2)(b)

§ 87(2)(g)

Officers:

§ 87(2)(g)

Allegations:

Allegation A: Officer Daniel Acosta used physical force against § 87(2)(b)

§ 87(2)(g)

Allegation B: Officer Daniel Acosta spoke rudely to § 87(2)(b)

§ 87(2)(b) alleged that PO Acosta stated, “she really fucked up my day,” to another officer as she was leaving the precinct. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: